

The Cape Town Spatial Justice Colloquium
14-15 April 2016
Faculty of Law / Institute for the Humanities in Africa (huma)
University of Cape Town

Despite the undisputed recognition, in an era designated as post-colonial, that the founding act of colonialism was and is the appropriation of space, the nexus between colonialism (as a law-founding and law-preserving violence) and spatiality has remained largely unexplored within the disciplinary confines of legal studies. By and large, the closest that scholars in both law and other social science disciplines have come to the consideration of the role of law in the spatial arrangements of colonialism, has been by treating law as an instrument of Foucaultian governmentality. Legal studies, particularly, has remained largely within the confines of positivism and its critique: it has indexed, pre-figured and has discussed extensively the transition from the colonial to the post-colonial as a transition from one profoundly undemocratic and oppressive state regime to a (liberal) democratic one. To take the example of South Africa: at one end, discussions of this nature represent and critique the South African transition as the replacement of an authoritarian government and a system of racialised capitalism with a liberal democratic government and a racially 'neutral', but neoliberally inclined, political economy. In this aspect, South Africa's transformation is seen as no different from those that have taken place in a number of other countries that have seen the end of undemocratic (or, at least, illiberal government) since the end of the 1980s. These range from formerly communist European countries to South America and most recently, the rise and fall of the Arab Spring.

These discussions tend to view the work of transformation in the face of the legacy of colonialism as the undoing of the legal apparatus of oppression through the institutionalisation of democracy, fundamental human rights, a substantive rule of law and juridicised processes of an ill-defined 'reconciliation'. The predominant focus on 'constitutionalism' ('transformative' as it may be) has meant that the discourse has found it difficult to move beyond a narrow institutional account and consideration of law. In doing so, it has been unable to appreciate that the construct, to paraphrase Iain Low, that most effectively maintained colonialism's grand plan and continues to ensure the endurance of its legacy, is space. Indeed, a defining feature of apartheid as a colonialism was that its law did not restrict itself to normative or institutional confines, but rather morphed into the physical spaces of the 'setting-apart' policy: first and foremost, apartheid law created highly regulated physical spaces of jurisdiction as dispossession, exclusion, exploitation, displacement and surveillance.

Hence, the key to the dismantling not just of apartheid, but of colonialism as a spatio-temporal arrangement in general was and continues to be the dismantling of its legally created and enforced spatial arrangements. It goes without saying that the same conclusion holds for the neo-colonialism that has become a defining feature of the neoliberal hegemony of global political economy.

Whatever the force in other disciplines of the critique of the neoliberal hegemony that to one or another degree has replaced and displaced colonialism, legal approaches to post-coloniality often stop short of addressing the specificity of colonialism as consisting in the way in which it translated the racist and classist normativity of its order into a concrete reality of divided and exploitative racial ordering that was spatially entrenched. This connection between law as a normative order and its concrete, spatial instantiation grounded in the soil, is what the German jurist, Carl Schmitt, calls *nomos*. For Schmitt, the Greek word *nomos* is a word that names law's 'terrestrial fundament', the unity of space and law, of order and localization. Derived from *nemein* – a word that means both "to

divide” and “to pasture” - *nomos*, according to Schmitt, signifies originally ‘the initial measure and division of pasture land, ie the land-appropriation as well as the concrete order contained in it and following from it’. More specifically, *nomos* is ‘the immediate form in which the political and social order of a people becomes spatially visible’, ‘the full immediacy of a legal power unmediated by laws’. At the beginning of every *nomos* we will find the ‘public signs’ of a concrete order grounded in the land, the marks through which ‘the orders [localizations] of human social life become apparent’, the inscriptions through which ‘the forms of ownership and human proximity, ... of power and domination, become visible: the fence, the wall, the enclosure, the line in the soil, the furrow in the field’.

From this point of view, the specificity of colonialism can be located in the meticulous way in which its regimes rendered and renders concrete its norms and rules, precisely by spatially inscribing them. To put it differently, the concreteness of colonialism as a normative order consisted in the persistent spatial presence of its law, in the way in which its forms and its norms were / are one. The ubiquitous spatial injustice of continuing conditions of de facto segregation and exploitation in the postcolony suggest that the basic injustice that lies at its core has not been superseded. Therefore, the question of post-colonial spatial justice becomes central to facing the challenges of transformation.

Papers will address, from a range of disciplines, the issues raised above in general or with reference to specific territories and jurisdictions. We are interested in how the convergence of the burgeoning literature on spatial justice and post-colonialism provide an opportunity to reflect on what a postcolonial spatial justice might look like.

If you would like to attend this colloquium, RSVP for catering purposes to Irena.Wasserfall@uct.ac.za by 13 March 2016.

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